

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STEPHEN McCOLLUM, STEPHANIE KINGREY, §
and SANDRA McCOLLUM, individually and as §
heirs at law to the Estate of LARRY GENE §
McCOLLUM, §

PLAINTIFFS §

v. §

CIVIL ACTION NO.
3:12-cv-02037

BRAD LIVINGSTON, JEFF PRINGLE, RICHARD §
CLARK, KAREN TATE, SANDREA SANDERS, §
ROBERT EASON, the UNIVERSITY OF TEXAS §
MEDICAL BRANCH and the TEXAS §
DEPARTMENT OF CRIMINAL JUSTICE. §

DEFENDANTS §

§

AGREED PROTECTIVE ORDER

The Parties, acting through their respective undersigned counsel, enter into this agreement pursuant to Federal Rule of Civil Procedure 11:

1. The facsimile signatures of their respective attorneys to this Agreement are sufficient to bind both parties and this agreement may be filed with the Court without the necessity of having original signatures attached.
2. Documents produced by Defendants in this action may be designated as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information by marking each page of the document(s) so designated with a stamp stating "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only"). In lieu of marking the original of a document, if the original is not produced, the designating party may mark the copies that are produced or exchanged. Originals shall be preserved for inspection.
3. All Confidential Information produced or exchanged in the course of this litigation shall be used solely for the purpose of preparation and trial of this litigation and for no other purpose whatsoever and shall not be disclosed to any person except in accordance with the terms hereof.
4. Confidential Information or "For Counsel Only" (or "Attorneys' Eyes Only") is any information of any type, kind, or character which is designated, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer or otherwise. In designating information as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only"), Defendants will make such designation only

as to the information that they in good faith believes contains confidential information, such as information protected by the Health Insurance Portability and Accountability Act (HIPAA), or diagrams or architectural blueprints to the security of Texas Department of Criminal Justice facilities.

5. Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a third party (which information pertains to a party) may be designated by Defendants as “Confidential” or “For Counsel Only” (or “Attorneys’ Eyes Only”) information by indicating on the record at the deposition that the testimony is “Confidential” or “For Counsel Only” (or “Attorneys’ Eyes Only”) and is subject to the provisions of this Order.

Defendants may also designate information disclosed at such deposition as “Confidential” or “For Counsel Only” (or “Attorneys’ Eyes Only”) by notifying all of the parties in writing within thirty (30) days of receipt of the transcript of the specific pages and lines of the transcript which should be treated as “Confidential” or “For Counsel Only” (or “Attorneys’ Eyes Only”) thereafter. All deposition transcripts shall be treated as “For Counsel Only” (or “Attorneys’ Eyes Only”) for a period of thirty (30) days after the receipt of the transcript.

To the extent possible, the court reporter shall segregate into separate transcripts information designated as “Confidential” or “For Counsel Only” (or “Attorneys’ Eyes Only”) with blank, consecutively numbered pages being provided in a nondesignated main transcript. The separate transcript containing “Confidential” and/or “For Counsel Only” (or “Attorneys’ Eyes Only”) information shall have page numbers that correspond to the blank pages in the main transcript.

6. “Confidential” information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons. Information designated as “For Counsel Only” (or “Attorneys’ Eyes Only”) shall be restricted in circulation to Qualified Persons described in Paragraph 7 below.

7. “Qualified Persons” are persons to whom Confidential Information or “For Counsel Only” (or “Attorneys’ Eyes Only”) may be shown, and as used herein means: (a) attorneys of record for the parties in this litigation and employees of such attorneys to whom it is necessary that the material be shown for purposes of this litigation; (b) actual or potential independent technical experts or consultants; and (c) if this Court so elects, any other person may be designated as a Qualified Person by order of this Court after notice and hearing to all parties.

8. Documents unintentionally produced without designation as “Confidential” may be retroactively designated in the same manner and shall be treated appropriately from the date written notice of the designation is provided to the receiving party.

9. Documents to be inspected shall be treated as “For Counsel Only” (or “Attorneys’ Eyes Only”) during inspection. At the time of copying for the receiving parties, such inspected documents shall be stamped prominently “Confidential” or “For Counsel Only” (or “Attorneys’ Eyes Only”) by the producing party.

10. Nothing herein shall prevent disclosure beyond the terms of this Agreement if each party designating the information as “Confidential” or “For Counsel Only” (or “Attorneys’ Eyes Only”) consents to such disclosure or, if the Court, after notice to all affected parties, orders such disclosures. Nor shall anything herein prevent any counsel of record from utilizing “Confidential” or “For Counsel Only” (or “Attorneys’ Eyes Only”) information in the examination or cross-examination of any person who is indicated on the document as being an author, source or recipient of the “Confidential” or “For Counsel Only” (or “Attorneys’ Eyes Only”) information, irrespective of which party produced such information.

11. A party shall not be obligated to challenge the propriety of a designation as “Confidential” or “For Counsel Only” (or “Attorneys’ Eyes Only”) at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. In the event any party to this litigation disagrees at any state of these proceedings with the designation by the designating party of any information as “Confidential” or “For Counsel Only” (or “Attorneys’ Eyes Only”) or the designation of any person as a Qualified Person, the parties shall first try to resolve such dispute in good faith on an informal basis, such as by production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who has designated the document or information as “Confidential” or “For Counsel Only” (or “Attorneys’ Eyes Only”). The designating party shall be required to move the Court for an order preserving the designated status of such information within fourteen (14) days of receipt of the written objection, and failure to do so shall constitute a termination of the restricted status of such item. The parties may, by stipulation, provide for exceptions to this Agreement and any party may seek an order of this Court modifying this Agreement.

12. Nothing shall be designated as “For Counsel Only” (or “Attorneys’ Eyes Only”) information except information of a sensitive nature and which includes as a major portion subject matter which is believed to be unknown to the opposing party or parties. Nothing shall be regarded as “Confidential” or “For Counsel Only” (or “Attorneys’ Eyes Only”) information if it is information that either: (a) is in the public domain at the time of disclosure, as evidenced by a written document; (b) the receiving party can show by written document that the information was in its rightful and lawful possession at the time of disclosure; or (c) the receiving party lawfully receives such information at a later date from a third party without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.

13. In the event a party wishes to use any “Confidential” or “For Counsel Only” (or “Attorneys’ Eyes Only”) information in any affidavits, briefs, memoranda of law, or other papers filed in Court in this litigation, such “Confidential” or “For Counsel Only” (or “Attorneys’ Eyes Only”) information used therein shall be filed under seal with the Court, or redacted pursuant to an agreement of the parties.

14. The parties will request that the Clerk of this Court be directed to maintain under seal all documents and transcripts of deposition testimony and answers to interrogatories, admissions and other pleadings filed under seal with the Court in this litigation which have been designated in whole or in part as “Confidential” or “For Counsel Only” (or “Attorneys’ Eyes Only”) information by a party to this action.


15. Unless otherwise agreed to in writing by the parties or ordered by the Court, all proceedings involving or relating to documents or any other information shall be subject to the provisions of this Agreement.

16. Within one hundred twenty (120) days after conclusion of this litigation and any appeal thereof, any document and all reproductions of documents produced by a party in the possession of any of the persons qualified under Paragraphs 3(a) through (d) shall be destroyed or returned to the producing party, except as this Court may otherwise order or to the extent such information was used as evidence at the trial. As far as the provisions of agreements entered in this action restrict the communication and use of the documents produced thereunder, such agreements shall continue to be binding after the conclusion of this litigation, except (a) there shall be no restriction on documents that are used as exhibits in Court, unless such exhibits were filed under seal, and (b) a party may seek either the written permission of the producing party or order of the Court with respect to dissolution or modification of such agreements.

17. This order shall not bar any attorney herein in the course of rendering advice to his client with respect to this litigation from conveying to any party client his evaluation in a general way of "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information produced or exchanged herein; provided, however, that in rendering such advice and otherwise communicating with his client, the attorney shall not disclose the specific contents of any "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information produced by another party herein, which disclosure would be contrary to the terms of this Protective Order.

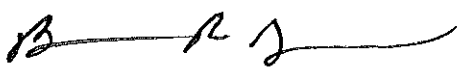
18. Any party designating any person as a Qualified Person shall have the duty to reasonably ensure that such person observes the terms of this Protective Order and shall be responsible upon breach of such duty for the failure of such person to observe the terms of this Protective Order.

Agreed to and signed by:



Jeff Edwards Scott Medlock
Attorney for Plaintiffs

5-23-13
Date



Bruce Garcia
Attorney for Defendants

5-23-13
Date